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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Contested
Cases of Burr Oak Manor and
Woodside Convalescent Center,
FOR

RULING ON MOTION

SUMMARY JUDGMENT

VS

Minnesota Department of
Human Services.

The above-entitled matter came on before Administrative Law Judge Peter C. Erickson at 10:30 a.m. on Thursday, July 6, 1989 at the Office of Administrative Hearings, Minneapolis, Minnesota. Oral argument was heard from both parties on Cross-Motions for Summary Judgment.

This matter initially arose pursuant to a Notice and Order for Hearing and Prehearing Conference dated April 28, 1986 for Burr Oak Manor and April 29, 1986 for Woodside Convalescent Center. An Order for Consolidation was issued on June 4, 1986. On April 7, 1987, the undersigned Judge issued an Order which denied a Motion for Summary Judgment filed by the Department of Human Services. This Order was certified to the Commissioner of Human Services on June 3, 1987. On December 15, 1987, the Commissioner of Human Services issued an Order which affirmed the denial of the Department's Motion for Summary Judgment and remanded this matter for hearing. Subsequent to the remand, the parties entered into a settlement agreement which resolved all of the issues in these cases except for the issue addressed herein. The settlement agreement was executed in June of 1989,

Mary R. Vasaly, from the firm of Maslon, Edelman, Borman & Brand, 1800 Midwest Plaza, Minneapolis, Minnesota 55402, appeared on behalf of the

Minnesota Department of Human Services (Department). K. Craig Wildfang, from the firm of Grossman, Karlins, Siegel, Brill, Gruepner & Duffy, Suite 1350, 100 Washington Avenue South, Minneapolis, MN 55401, and Joseph E. Casson, from the firm of Casson, Harkin & LaPallo, Suite 800, 1233 - 20th Street N.W., Washington, D.C. 20036-2396, appeared on behalf of Hillhaven, Inc., the owner (Provider) of Woodside Convalescent Home (Woodside or the Facility). The record closed on July 28, 1989, the date of receipt of the last brief.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Commissioner of Human Services shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Acting Commissioner Charles C. Schultz, Department of Human Services, Second Floor Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155.

STATEMENT OF ISSUE

The issue to be determined herein is whether the Department of Human Services properly calculated the effect of the rate limitation provided by Minn. Stat. 256B.03 (1981) in setting Woodside's rates for the FYE May 31, 1983.

The following Facts are not disputed by the parties and will form the basis for the Conclusions and Recommendation below.

1. In 1981, the Minnesota Legislature enacted a ten percent rate cap increase on rates paid to nursing homes for rate years beginning during the biennium ending June 30, 1983. Minn. Stat. 256B.03, subd. 2 (1981) provides that the rates paid "shall not exceed by more than ten percent the final rate allowed to the facility for the preceding rate year." This rate "cap" does not apply in the following two situations: (1) when rates are established for a newly constructed home; and (2) when rates are set for a facility which has increased its number of beds by at least 50 percent. See, Minn. Rule 9510.0070.

2. Prior to September 1, 1982, National Health Enterprises, Inc. (NHE) owned Woodside and operated it on an April 1 through March 31 fiscal year basis. The Department used NHE's March 31, 1982 cost report to set prospective rates for Woodside for the period April 1, 1982 through March 31, 1983 pursuant to the rate limitation prescribed by Minn. Stat. 256B.03, (1981).

3. On September 1, 1982, Hillhaven acquired, by statutory merger, all of the assets of NHE, including Woodside. After Hillhaven's purchase of Woodside, it changed its FYE to May 31. As a result of this change in ownership, NHE submitted to the Department a revised short-period cost report covering April 1, 1982 through August 31, 1982. Hillhaven desired to have new rates set for the period September 1, 1982 through May 31, 1983. However, the Department rejected the five-month cost report and returned it to Hillhaven. The Department instructed Hillhaven to submit a 14-month cost report for the period April 1, 1982 through May 31, 1983. Based on this cost report, the Department set rates for Woodside for the period September 1, 1982 through May 31, 1983. This calculation included a prorated additional ten percent increase for the months of April and May, 1983.

4. In calculating the rates paid to Woodside for the period September 1, 1982 through May 31, 1983, the increased property costs resulting from the change in ownership were not fully recognized. The increased rate paid was based only on an additional ten percent increase due Woodside for the months of April and May 1983. That ten percent increase was calculated based on the

prior years' rates paid to Woodside under NHE ownership. The costs associated with the change in ownership herein were not reflected in the rates paid to Hillhaven from September 1, 1982 through May 31, 1983.

Based upon the undisputed Facts set forth above, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of the Minnesota Department of Human Services have jurisdiction in thin matter pursuant to Minn. Stat. 14.50 and 256B.27 and Minn. Rule 9510.0140.

2. The Department of Human Services gave proper notice of the hearing in this matter and has complied with all relevant substantive and procedural requirements of statute and rule.

3. The Appellant (Hillhaven) bears the burden of proof in this matter pursuant to Minn. Stat. 256B.50, subd. 1c. (1988).

4. For the reasons set forth in the Memorandum below, Hillhaven has not shown that the Department incorrectly calculated the rates paid to Woodside for the period September 1, 1982 through May 31, 1983.

Based upon the foregoing Conclusions, the Administrative Law makes the following:

RECOMMENDATION

Summary Judgment for the Department is GRANTED;

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services affirm the rates established by the Department and paid to Woodside for the period September 1, 1982 through May 31, 1983.

Dated this 17 day of August, 1989.

PETER C. ERICKSON
Administrative Law judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: No Evidentiary Hearing.

MEMORANDUM

Hillhaven argues that it is entitled to a "new" rate for Woodside effective September 1, 1982 which would recognize all of the property costs associated with the purchase and then be entitled to a ten percent "capped" increase on June 1, 1983, the beginning of its new rate year. However, there is no authority either in statute, rule or case law to support Hillhaven's argument.

Rule 49, the reimbursement rule applicable herein, is designed to reimburse providers for all allowable costs associated with the purchase and

operation of a nursing home. In 1981, the Minnesota Legislature determined

that until June 30, 1983, increases in rates paid to "facilities" would be capped at ten percent. Specifically, the Legislature required that the ten percent increase be calculated by using the "final rate allowed to the facility for the preceding rate year." This language must be read to apply to the nursing home itself and not the owner of the home. There is no exception contained in statute that would exempt a nursing home purchaser from the application of the ten percent cap.

Because in certain situations the Department of Human Services recognized that an absence of historical cost data would make the ten percent cap mandate meaningless, two exceptions were enumerated in Rule 49. Those exceptions were for a newly constructed nursing home (obviously there would be no historical cost data for a brand new home) and for homes which increased their bed capacity by over 50 percent (such a capacity increase would greatly affect prospective costs). Neither of these situations is present herein.

Hillhaven contends that the Department's implementation of Minn. Stat. 256B.03 "violated" Rule 49 which specifically permits an increase in a facility's basis for depreciation in the event of a change in ownership. However, to the extent that rules conflict with statutory mandates, the rules are invalid. *Buhs v. State, Department of Public Welfare*, 306 N.W.2d 127, 131 (Minn. 1981). Additionally, the language of Minn. Stat. 256B.03, subd. 2 shows that the Legislature must have contemplated possible conflicts in reimbursement provisions. It reads:

Subd. 2. limit on annual increases to long-term care providers. Notwithstanding the provisions of sections 256B.42 to 256B.48, Laws 1981, Chapter 360, Article 11, Section 2, or any other provision of chapter 360, and rules promulgated under those sections, rates paid to a skilled nursing facility or an intermediate care facility, including boarding care facilities and supervised living facilities . . . for rate years beginning during the biennium ending June 30, 1983, shall not exceed by more than ten percent the final rate allowed to the facility for the preceding rate year. (Emphasis added).

The statute can only be read to apply the ten percent cap across-the-board to existing "facilities" regardless of changes in ownership.

Hillhaven contends that Minn. Rule 9510.0150, subp. I required the Department to accept a short-period cost report from Hillhaven for the period September 1, 1982 through its fiscal year end, May 31, 1983. That rule states that, "newly established providers or providers who change their fiscal year must file short period reports if the period covered is more than five months." Consequently, Hillhaven asserts that it should have been entitled to a new rate from September 1, 1982 through May 31, 1983 and a "ten percent added-on" rate

from June 1, 1983 through June 30, 1983. However, implementing the rule as suggested by Hillhaven would be in direct conflict with Minn. Stat. sec. 256B.03, subd . 2 .

Hillhaven purchased Woodside during a period of time when the Minnesota Legislature had determined that "facilities" would only be entitled to a ten

percent rate increase based on the rate paid to the "facility" for the preceding rate year. There is no evidence of legislative intent in the record but obviously, cost reduction to the State must have been a primary concern. Hillhaven had adequate notice that this rate limitation was in effect for the facility it purchased, Woodside. Its decision to participate in the Medical Assistance program with this rate limitation was voluntary. See, Mapleton Community Home, Inc. v. Minnesota Department of Human Service\$, 391 N.W.2d 798, 802 (Minn. 1986). As discussed above, the statutory rate limitation clearly applies in this case.

P C. E.